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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,660	02/01/2006	Wolfgang Rochrl	1703 1492US	7263
29894 7590 07/11/2007 DREISS, FUHLENDORF, STEIMLE & BECKER POSTFACH 10 37 62 D-70032 STUTTGART, GERMANY			EXAMINER KIDWELL, MICHELE M	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 07/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,660

Applicant(s)

ROEHRL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-22 and 24-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-22 and 24-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 24, 27 – 29 and 35 – 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Karlsson (WO 02/22063).

With reference to claims 20, 24, 27 – 29 and 35 – 38, Karlsson discloses a disposal diaper for user incontinent care, the diaper comprising: a hip belt forming a peripherally closed hip opening of the diaper with means for opening and closing the hip belt at a least one location; a main diaper portion having a front region, a rear region, an intermediate crotch region, a back sheet layer facing away from the patient which is impermeable to liquids, a top sheet layer facing the user which is permeable to liquids, and an absorptive body for body fluids, wherein said main diaper portion also has means for attachment to said hip belt in a detachable fashion at a longitudinal end of said front region or of said rear region via first closing means in such a fashion that the user, with said hip belt applied, raises said main diaper portion between the legs and attaches a free longitudinal end of said main diaper portion to said hip belt in a detachable fashion, wherein said first closing means are disposed between said hip belt and said longitudinal end of said main diaper portion; and longitudinally extended

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second closing means for effecting a holding connection between said hip belt and said front region or said crotch region of said main diaper portion, said second holding means being structured, dimensioned and disposed such that the user, after loosening said first closing means, folds or opens said front region of the said main diaper portion away from said hip belt wherein, in an applied state of the diaper, said second closing means extend in an approximately V-shaped manner with respect to each other from the hip belt to the crotch region as set forth on page 4, line 1 to page 5, line 31 and in the figures.

The examiner contends that the limitations regarding the way the diaper folds or opens after loosening a first closing means is considered a functional limitation in which the article of Karlsson is fully capable of performing. Likewise, the limitation reciting raising the main diaper portion is a recitation of intended use which does not provide a patentable structural distinction from the invention of Karlsson.

Furthermore, the examiner contends that the language "in an applied state" may include any state of the diaper including a state where the ends of the belt are pointing downwards on opposite sides of the diaper forming an approximately V-shaped state where the second closing means (10, 11) would extend in an approximately V-shaped manner with respect to each other from the hip belt to the crotch region as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21 – 22, 25 –26 and 30 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karlsson (WO 02/22063).

With reference to claims 21 and 22, the examiner contends that it would have been obvious to one of ordinary skill in the art to modify the second closing means in order to determine the most effective product since the general conditions of the claim have been disclosed in the prior art and discovering the optimum or workable range involves only a level of ordinary skill in the art.

With respect to claims 25 – 26, 30 – 34, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Response to Arguments

Applicant's arguments with respect to claims 20 – 22 and 24 – 38 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michele Kidwell
Primary Examiner
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